IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 301 of 1993

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

TRIVENIBEN JAGJIVAN

Versus

VINODRAI GHELABHAI

Appearance:

MR PN BAVISHI for Petitioner

MR VM DHOTRE for Respondent No. 1

MR SP DAVE APP for Respondent No. 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 03/05/2000

ORAL JUDGEMENT

Heard the learned advocates.

This Revision Application under section 397 read with section 401 CRPC has been preferred by the

complainant against the acquittal recorded by the learned JMFC, Bagasara, on 14th March, 1991, in Criminal Case No. 1/91.

The petitioner before this court is the complainant. On 26th December, 1990, at around 12-30 in the afternoon, the complainant lodged a complaint against the respondents nos. 1 and 2 herein-the accused. It was alleged that the complainant and the accused were the neighbours and were residing in the adjacent houses. On 26th December, 1990, at around 8-30 in the morning the accused were placing some nails in the common wall between the two houses. Thereupon the complainant came out of her house and inquired why they were placing nails and also complained about water entering in the foundation of the house and thereby causing damage to the house. This resulted into a quarrel between the complainant and the accused. Hearing the loud voice, the daughter of the complainant also came out of the house. Feeling enraged, the accused started beating the complainant with stick and when the daughter Fulbala intervened, she was also beaten by a stick. Both, the complainant and her daughter Fulbala started bleeding, and their clothes were also stained with blood. The accused were thus alleged to have committed offences punishable under sections 323, 504 and 114 IPC and section 135 of the Bombay Police Act. In course of trial, the complainant and the witnesses Fulbala and one Nurbai - a neighbour gave the evidence. The Medical Officer was also examined. On appreciation of evidence, the learned Magistrate has recorded that there was a great variance between the depositions of the witnesses i.e. the complainant, and the witnesses Fulbala and Nurbai. Further, the Panchnama was produced, no blood was found at the spot of the incident, nor the blood stained clothes were produced, nor the blood stains were on the weapon-stick. The evidence of the complainant and witness Fulbala was not supported by the Medical Officer either. It was found that the injury sustained by the complainant and the witness Fulbala were not such which could have caused profuse bleeding as complained. The allegation that the witness Fulbala had suffered injury which was required to be stitched was also not supported by the Medical Officer, nor was any injury certificate produced. Thus, the learned Magistrate has not found the evidence to be reliable and has acquitted the accused as the charge against them could not be proved.

Considering the evidence of the witnesses i.e. that of the complainant, the injured Fulbala, Nurbai and the Medical Officer, the finding recorded by the learned

Magistrate can not be said to be erroneous or such as no person well instructed in law could reach. The order of acquittal recorded by the learned Magistrate, therefore, does not warrant interference.

Application is dismissed. Rule is discharged.

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JOSHI